SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CG)

WRIT PETITION No 5502 /2005

Petitioner : Mithilesh Kumar,
Aged about 40 years
R/o C-38 Sonadih Cement Plant Colony,
Lafarge India Ltd,
Post: Raseda, Via: Baloda Bazar,
Dist. Raipur (CG)

Respondents 1) President,
State Industrial Court,
Chhattisgarh, Raipur.

Attested 17/3/06

2) M/s Lafarge India Ltd,
Through its Vice President
Sonadih Cement Plant, Sonadih,
Post: Raseda, Via: Baloda Bazar,
Dist: Raipur (CG)

Writ Petition under Article 226 and 227 of the Constitution of India

SINGLE BENCH

Uploaded (4)

Amendment incorporated as per court order dated 24/2/06

28/2/06

AR(05)

3) Labour Court,
Raipur (C.G.).

2.

3.

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 5502 of 2005

Petitioner : Mithilesh Kumar

Versus

Respondents : President, State Industrial Court, Chhattisgarh, Raipur and others

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Shri Gary Mukhopadhyay, counsel for the petitioner.
Shri N.K. Vyas, counsel for the respondent No. 2.

O R D E R

(Passed on 5th day of February, 2007)

1. The petitioner was initially appointed as Sub-Inspector in the Central Reserve Police Force during the period 1988-1993. In the year 1993, the petitioner was appointed as Assistant Officer (Security) by M/s. Tata Steel Ltd., (Cement Division) and was posted at Plant Sonadih (now Lafarge India Ltd.) by the appointment order dated 13.8.1993 (Annexure P/3). The said company was purchased by the respondent No. 2-Company with effect from 1.11.1999. Accordingly, service of the petitioner was also transferred to the respondent No. 2-Company. It was alleged that the petitioner had misbehaved and attempted to molest one minor girl, namely, Ku. Pallavi on 23.8.2000. The complaint to that effect was lodged after a period of one month, on 22.9.2000 (Annexure P/5). The respondent No. 2/employer having come to know of the alleged incident initiated the departmental enquiry

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after service of a proper charge-sheet to the petitioner. On the basis of the enquiry, wherein the alleged charge-sheet was found proved, the petitioner was terminated from his services by the order dated 16th April, 2001 with effect from 20th April, 2001.

2. The petitioner, being aggrieved, preferred an application before the Labour Court, Raipur for the relief of reinstatement with back wages on the ground that the departmental enquiry was vitiated as no proper opportunity of hearing was afforded to the delinquent (petitioner). The Labour Court, by the order dated 24.9.2003, held that the departmental enquiry against the petitioner was bad and invalid. It was held that no misconduct allegedly committed by the petitioner has been found proved. It was further held that the charge of molestation of a minor girl in the residential colony was not found proved. The Labour Court set aside the order of termination and directed reinstatement in service without back wages.

3. Against the order dated 24.9.2003, passed by the Labour Court, the employer/respondent No. 2 filed an appeal before the Industrial Court, Chhattisgarh, Raipur, being Appeal No. 35/C.G.I.R.Act./A-II/2005, challenging the order of reinstatement. The petitioner also filed an appeal before the Industrial Court, Chhattisgarh, Raipur, being Appeal No. 38/C.G.I.R.Act/A-II/2005, challenging the order of denial of back

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wages. The Industrial Court, by the order dated 26th September, 2005 (Annexure P/1), held that misconduct allegedly committed by the petitioner has not been found proved. Even otherwise, the said alleged conduct does not involve moral turpitude asto disturb industrial discipline. The Industrial Court accordingly confirmed the finding of the Labour Court with regard to holding of the departmental enquiry as bad. However, without assigning any reasons, allowed the appeal of the respondent No. 2-Company partly by directing that the employer should either reinstate the employee on the same post or should pay Rs. 2 lakks as compensation in lieu of reinstatement to the employee. The appeal of the petitioner for grant of back wages was dismissed.

4. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto. On perusal of the documents, it appears that the enquiry has been held as bad by both the Courts/Tribunals below and the alleged misconduct has also not been found proved. Thus, consequential relief would be reinstatement in service. The Industrial Court by granting option to the employer has committed error as no reasons has been assigned for exercise of option to pay a sum of Rs. 2 Lakhs in lieu of reinstatement. According to learned counsel appearing for the petitioner, the petitioner has worked only for 9 years and has still

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21 years left. The grant of Rs. 2 Lakhs would not be sufficient to make both ends meet.

5. It is well settled that the High Court exercising of judicial review under Article 226/227 of the Constitution of India does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Thus, the grant of reinstatement would be the proper order to subserve interest of justice. In the facts and circumstances of the case, the petitioner is not entitled to any back wages.

6. As a result and for the reasons-stated hereinabove, this petition is allowed to the extent of grant of reinstatement. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu